

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRIAN SMITH,	)	NO. CV 12-4315-GHK(E)
	)	
Petitioner,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
RANDY GROUNDS, et al.,	)	
	)	
Respondents.	)	
	)	
_____	)	

In 1999, Petitioner filed a habeas petition in this Court challenging a 1994 conviction and sentence that occurred in Superior Court case No. VA020803. See Smith v. The President of the United States, et al., No. CV 99-10051-LGB(E). By Judgment entered May 19, 2000, this Court entered Judgment denying and dismissing the petition with prejudice.

In July, 2002, Petitioner filed another habeas petition in this Court attempting to challenge the same Superior Court conviction and sentence. See Smith v. Carey, No. CV 02-5273-AHM(E). By Judgment entered July 25, 2002, this Court denied and dismissed the petition

1 without prejudice as "second or successive" within the meaning of 28  
2 U.S.C. section 2244(b).

3  
4 In August, 2002, Petitioner filed another habeas petition in this  
5 Court attempting to challenge the same Superior Court conviction and  
6 sentence. See Smith v. The President of the U.S., No. CV 02-7340-  
7 GHK(E). By Judgment entered September 30, 2002, this Court denied and  
8 dismissed the petition without prejudice as "second or successive"  
9 within the meaning of 28 U.S.C. section 2244(b).

10  
11 In December, 2002, the United States Court of Appeals for the  
12 Ninth Circuit denied Petitioner's application for authorization to  
13 file a second or successive habeas petition. See Smith v. Carey,  
14 No. 02-73207.

15  
16 In April, 2008, Petitioner filed another habeas petition in this  
17 Court attempting to challenge the same Superior Court conviction and  
18 sentence. See Smith v. Sisto, No. CV 08-2756-GHK(E). By Judgment  
19 entered May 12, 2008, this Court denied and dismissed the petition  
20 without prejudice as "second or successive" within the meaning of 28  
21 U.S.C. section 2244(b).

22  
23 The present Petition again challenges the sentence in Superior  
24 Court case No. VA020803.<sup>1</sup> Again, this Court must deny and dismiss the  
25 Petition without prejudice. See Burton v. Stewart, 549 U.S. 147, 127

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26  
27 <sup>1</sup> The present Petition utilizes a form designed for  
28 federal prisoners, but clearly challenges Petitioner's state  
sentence (Petition at 4).

1 S. Ct. 793, 799 (2007) (where petitioner did not receive authorization  
 2 from Court of Appeal before filing second or successive petition, "the  
 3 District Court was without jurisdiction to entertain [the petition]");  
 4 Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir. 2000) ("the prior-  
 5 appellate-review mechanism set forth in § 2244(b) requires the  
 6 permission of the court of appeals before 'a second or successive  
 7 habeas application under § 2254' may be commenced"); Thompson v.  
 8 Calderon, 151 F.3d 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 954  
 9 (1998) (a petition need not be repetitive to be "second or successive"  
 10 within the meaning of 28 U.S.C. section 2244(b)); Calbert v. Marshall,  
 11 2008 WL 649798, at \*2-4 (C.D. Cal. Mar. 6, 2008) (same); see also Rule  
 12 9 of the Rules Governing Section 2254 Cases in the United States  
 13 District Courts.

14  
 15 For all of the foregoing reasons, the Petition is denied and  
 16 dismissed without prejudice.

17  
 18 LET JUDGMENT BE ENTERED ACCORDINGLY.

19  
 20 DATED: 5/23, 2012.

21  
 22   
 23 \_\_\_\_\_  
 GEORGE H. KING  
 UNITED STATES DISTRICT JUDGE

24 PRESENTED this 22nd day of  
 25 May, 2012, by:

26  
 27 \_\_\_\_\_/S/\_\_\_\_\_  
 CHARLES F. EICK  
 28 UNITED STATES MAGISTRATE JUDGE